Environmental Planning after Brexit

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ENVIRONMENTAL PLANNING AFTER BREXIT

Working with the legacy of EU environmental directives

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Executive Summary

The June 2016 referendum result in favour of leaving the European Union (EU) has created a high level of openness about the future trajectory of many policy areas in the UK. The opportunities and risks are especially significant for the environment, given the profound effects of EU legislation on domestic policy and, in turn, for the way that environmental legislation interfaces with planning.

The question that guides this research is: how should the relationship between EU environmental legislation and the planning systems of the UK evolve, post Brexit? Can the relationship be improved, either by simplification or the identification of better ways of achieving environmental goals?

Thinking on this issue starts from a low base. Despite forty years of EU membership, the interface between European environmental legislation and planning has evolved piecemeal over 40 years, with little strategic reflection on how these two sets of institutions interact.

There is also urgency. Although the scope for making legislative changes will be affected by the kind of withdrawal agreements and trade deals that ultimately are struck, key aspects of domestic Brexit-driven legislation are being formed *now* – such as The Environment (Principles and Governance) Bill (2018) – with major implications for how environmental policy and planning intersect into the future.

The analysis presented here is based on two blocks of research:

- Documentary analysis of the provisions of ten key EU environmental directives and how they connect to planning, along with assessment of commentary from government (e.g. red tape reviews), the planning profession (RTPI consultation responses to EU environmental directives) and wider research;
- Interviews and focus groups with senior individuals involved in planning, from public, private and voluntary sectors, gathered from England, Northern Ireland, Scotland and Wales.

Context

To assess the relationship between EU environmental legislation and planning requires sensitivity to the following key issues:

- EU environmental legislation sits within wider EU-UK relations, entailing other policy areas and policy mechanisms.
- EU environmental legislation is embedded in UK domestic legislation, making teasing out the additional causal effect of EU legislation difficult. What gives EU environmental legislation its efficacy is the wider governance architecture for *inter alia* monitoring and enforcing implementation, which is also at risk with Brexit.
- The merits of EU environmental legislation have been contested.
- Planning and environmental policy are both highly devolved in the UK, creating different challenges for future development of the environment-planning interface across the four nations of the UK.

Findings from the documentary analysis

The interface between EU environmental directives and planning varies in form and intensity between Directives and environmental policy area. Planning is an aide to implementation for many directives (Ambient Air Quality Directive, Water Framework Directive, Waste Framework Directive), only becoming a prime delivery agent for Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives, with the regulatory and strategic planning powers of the system also being important to the Habitats and Birds Directives.

EU environmental legislation, like planning, has been subjected to a pervasive discourse promoting 'cutting red tape' or streamlining. However, closer examination of government regulatory reviews and other materials reveals few specific ideas for change and the adoption of a very narrow, pro-business perspective. Most commentators have not been concerned with environmental efficacy.

The dominant tenor of the RTPI's consultation responses to EU environmental legislation is positive. The responses tend to press for ways to improve the environmental outcomes, sometimes vis-a-vis a minimalist, compliance-based approach adopted by government.

Such analysis might suggest that there is relatively little unexplored scope for change, post-Brexit. Equally, however, it may reflect the fact that most parties have assumed that EU membership and therefore compliance with EU legislation was the future and this has framed their thinking.

The wider research literature concludes that EU environmental legislation has delivered environmental improvements in the UK, and the benefits are especially clear for those Directives which institute clear goals and targets, and where in turn the European Commission the European Court of Justice can monitor and enforce implementation. Questions thus arise as to the merits of retaining or recreating these regulatory features post Brexit.

Existing research shows more debate about the effects of procedural measures like EIA and SEA, but numerous studies have concluded that these still generate positive environmental improvements to projects and plans (albeit often relatively minor), and can provide greater transparency and accountability in decision-making.

Of course, EU environmental legislation has encountered a host of problems in realising all of its goals. What research also shows is that it is difficult to separate the effects of EU environmental legislation in a narrow, formal sense from a wider set of social and political factors affecting (i) how the legislation is interpreted and transposed by national government and (ii) how, in turn, European and national requirements are interpreted and applied in planning practice.

Given this, Brexit might be best viewed as an opportunity to address wider issues around the interface between environment and planning in the UK, including those with home-grown causes.

Findings from the interview and focus group research

Most respondents were firmly of the view that EU membership had underpinned significant improvements in environmental quality and raised levels of environmental protection. They appreciated particular qualities of EU legislation, such as its purposive nature, the (generally) clear objectives and targets, its durability and detachment from short-termist political pressures, and the way that it underpinned consistent practices.

There was more diversity of view and equivocation on the effects of specific procedures, with EIA and SEA attracting much discussion. Perceptions that procedures could be bureaucratic, complex, disproportionate and costly were commonly expressed, linked to concerns that positive outcomes were not always obvious.

Nevertheless, few respondents linked the difficulties they experienced to ways of changing EU-derived legislation post-Brexit. Other factors, like the lack of resources or experienced staff in planning authorities or other bodies, could greatly affect the efficacy and efficiency with which environmental measures supported planning and vice versa.

Respondents were invited to offer views on a number of scenarios, each outlining a direction in which the interface between EU environmental legislation and planning could evolve, post-Brexit. Overall, respondents were:

- very positive about a scenario in which firm environmental goals and standards were retained, and the role of planning in delivering on them was enhanced;
- almost equally positive about a scenario which gave local and national actors more flexibility in the means by which those goals were achieved;
- highly negative about scenarios that allowed more scope for goals to be softened, or derogations to be made, at the discretion of local and national decision-makers.

Another key message from the interviews and focus groups is that the prospects for the future looked very different across the constituent nations of the UK. In Northern Ireland, there were stark concerns that any loss of EU environmental protections risked deepening what was already a major environmental governance gap. In Wales and Scotland, alignment with EU standards post-Brexit received strong political support, and steps had already been taken through domestic reforms to align planning with environmental outcome goals.

Conclusions

Our research did not identify major, explicit pressure for change to EU environmental legislation and the way that it interfaced with planning. Indeed, respondents expressed some desire for short-term regulatory continuity while the uncertainties of the Brexit process play themselves out.

However, events are already unfolding which affect the future interface with planning. Moves to institute environmental principles in domestic legislation, to create new environmental watchdog(s) to replace the monitoring and enforcement functions of the EU, and the substantive environmental goals of (in England) the 25 Year Environmental Plan could push towards a more EU-style, goal-focused system of environmental governance as the UK leaves the EU.

What is very much up for grabs is whether and how far planning is incorporated within this emerging system, or whether Brexit leads to an extension of traditional, more discretionary regulatory styles to areas of environmental concerns formerly governed by EU legislation.

To assist in structuring the debates that will ensue, the research offers two heuristic tools.

- One focuses on what is causing problems at the planning-environment interface – is it EU legislation, domestic transposition, or implementation in the field?
- The second pulls together issues relevant to any moves to simplify EU-derived environmental legislation, by asking: how precautionary should we be?; who decides?; what are the checks and balances?; what are the merits of a consistent framework?

1.0 Introduction

1.1 The research agenda

The June 2016 referendum result in favour of leaving the EU has created a level of openness about the future trajectory of life in the UK almost unparalleled in living memory. This openness comes with profound uncertainties and risks and it may be a sound strategy for the planning profession to wait and see how events pan out before contemplating the implications for our sector. Equally however, there is a case for trying to peer through and beyond the uncharted waters, to identify areas where significant and progressive change can be made.

In few areas are there greater opportunities than in the interface between planning and EU environmental legislation. Environmental policy across the UK has been profoundly affected by membership of the European Union. The EU has developed principles, legislation and governance arrangements that have re-shaped the treatment of many issues, from air and water quality to habitats protection and waste (Burns et al 2016). This 'Europeanisation' of UK environmental policy has affected the planning system in myriad ways, both directly and indirectly (Cowell and Owens 2016): but it has done so incrementally, with little analytical reflection on how these two sets of institutions interact. Such abnegation was perhaps defensible in a world in which EU compliance was required; it may be illogical now.

There is also urgency. Although the scope for departing from EU-derived legislation will be affected by the kind of withdrawal agreements and trade deals that ultimately are struck (Hilson 2018; IEEP 2018; Reid 2018), key aspects of domestic Brexit-driven legislation are being formed *now* – such as The Environment (Principles and Governance) Bill (2018) – with major implications for how environmental policy and planning intersect into the future.

The question that guides this research is as follows: *how should the relationship between EU-derived environmental legislation and the planning systems of the UK evolve, post-Brexit?*

The task is to look beyond the uncertainty of the Brexit process itself to examine some strategic issues for planning across the UK, viz.:

- to identify ways of improving the relationship between inherited EU environmental legislation and planning
- to see where there may be opportunities for enhancement or simplification, in the way that environmental standards are achieved, and especially whether there is duplication between environmental and planning regimes
- to do so on the basis of careful analysis of whether, how and how far EU environmental directives have contributed to positive outcomes

1.2 Methodology

There have been few previous studies of this nature or scope (TCPA 2018; RCEP 2002), and the interface between planning and EU environmental legislation can be a slippery thing to study. To give some structure and rigour to the investigation, the following methodology was adopted, involving:

Documentary analysis, of:

- EU environmental legislation and associated research, focusing specifically on ten Directives identified as particularly relevant to planning in preceding RTPI Brexit research (IEEP 2018). This aimed to identify how these Directives and their various governance mechanisms have fitted on to UK planning regimes, and how this 'EU additionality' in turn relates to the outputs and outcomes delivered.
- Previous commentary on EU environmental directives and associated UK implementing measures. This included red tape reviews and planning sector responses to government consultations. The assumption here was that future ideas for change might draw on past criticisms. Thus, the goal of the analysis was to tease out views on what was problematic, how arrangements might be improved, and to understand the underlying reasoning or evidence base.

Engagement with the planning profession, through:

- Interviews with 21 individuals from public, private and voluntary organisations involved with planning and environmental policy, and all levels of government, from across the UK, chosen particularly for their prior experience in processes of policy change;
- Four focus groups, held in Liverpool, Belfast, Cardiff and Edinburgh during September and October 2018, involving 38 participants in total[1], drawn from public, private and voluntary organisations engaged in planning and its environmental dimensions.

Both the interviews and the focus groups were designed to gather views on the interface between EU environmental policy and planning at present and to access views about the merits and direction of change in the future. They were also designed to tease out different perspectives created by devolution within the UK. As a further opportunity for discussion and feedback, our emerging ideas were aired at a session of the Planning Research Conference in Sheffield, held 4th September 2018.

As an integral component of the research, the team used the initial documentary analysis and interviews to draw up (a) propositions for potential areas of future institutional or legislative change, and (b) four broader scenarios about potential approaches to the planning/environment interface that could emerge post-Brexit (see Appendix 1). These were then tested and used as a focus for discussion in subsequent interviews and in the focus groups.

1.3 Structure of the report

Section 2 provides context for research on Brexit, environment and planning, covering: the wider dimensions of EU-UK relations around planning; the likelihood of change, post-Brexit; contestation and devolution.

Section 3 presents the findings of the documentary analysis, looking at how EU environmental legislation interfaces with planning, before reviewing evidence from critical reflections on that interface, from government and the planning profession, and finally from wider research.

Section 4 presents the key findings of the interviews and focus groups, summarising overall views

[1] Excluding the research team organisers and representatives from RTPI London HQ.

on EU environmental legislation and planning, responses towards particular, specific propositions for change, and attitudes towards broader scenarios for future planning/environmental governance.

Section 5 presents the main outputs, which are: specific recommendations for new ideas and solutions; heuristic tools for assessing whether the retention of all or parts of EU Directives is appropriate or whether these should be altered or even extended; and priority areas for further investigation.

2.0 Understanding the problem

2.1 Introduction

It would be tempting to regard the relationship between the planning system and EU-derived environmental legislation as a technical matter, explicable by a mechanical reading of relevant law, and to treat assessment of the opportunities for positive change in a similarly mechanistic manner. In practice, this research has been sensitive to:

- the need to situate the specific focus of this study within wider EU-UK relations around planning and EU environmental governance architecture;
- the need for nuance in teasing out the additional and causal effects of EU legislation;
- contestation about how EU environmental legislation effects the UK and planning, and the merits of its effects;
- the need to recognise that within the UK both planning and environment are substantially devolved policy areas.

2.2 Environment legislation within EU-UK planning relations

The body of EU environmental legislation (acquis) has developed and evolved significantly since the 1980s, many elements of which have important connections to the planning system (see Cowell and Owens 2016; Wilson 2009). Previous research for the RTPI (IEEP 2018) identified the following ten directives as especially relevant to planning, and it is these that have been adopted as the main focus of this research:

The Environmental Impact Assessment Directive (2011/92/EU, as amended)
The Strategic Environmental Assessment Directive (2001/42/EC)
The Habitats Directive (92/43/EEC)
The Birds Directives (2009/147/EC)
The Water Framework Directive (2000/60/EC)
The Ambient Air Quality Directive (2008/50/EC)
The Urban Waste Water Treatment Directive (91/271/EEC)
The Waste Framework Directive (2008/98/EC)
The Marine Strategy Framework Directive (2008/56/EC)
The Maritime Spatial Planning Directive (2014/89/EU)

There are other pieces of EU environmental legislation that also have implications for planning. For example the Renewable Energy Directive (2009/28/EC), which has underpinned UK renewable energy targets; the Seveso Directive III on the control of major accident hazards involving dangerous substances (2012/18/EU), which can affect the siting of development; the Energy Performance of Buildings Directive (2010/31/EU) and the Energy Efficiency Directive (2012/27/EU); and the Environmental Noise Directive (2002/49/EC), requiring creation of noise mappings and action plans in urban areas.

However, environmental legislation is just one part of the EU's policy toolkit and just one sphere in which the EU membership has shaped planning in the UK (Bishop et al 2000, 309; Haigh 1989; Morphet 2017; Rydin 2003; Tewdwr-Jones and Williams 2001).Through action at EU level,

member states have jointly sought to address spatially uneven territorial development across European territory (Jackson and Roberts 2000). As well as the structural funds, EU funding schemes have supported cross-border planning initiatives and the cross-community coordination and collection of spatial data. EU arenas and initiatives have provided venues for the sharing of best practice on planning and environmental matters. Other funding mechanisms such as the LIFE programme have been available to support the delivery of environmental goals; much valued in the wider UK context of public sector austerity. All of these, too, face a highly uncertain future after Brexit, with diverse implications for planning practice.

2.3 Understanding additionality and causality

Understanding the net effect of EU environmental legislation on outputs and outcomes in the UK requires careful interpretation. In many areas of environmental policy (including planning), the UK already had some institutional arrangements in operation, so the question is working out the additionality of EU action vis a vis domestic approaches (Hilson 2018). Over time EU legislation has become embedded in UK environmental and planning legislation, such that "you cannot flick through the statute book and see immediately which provisions come from the EU and which are home grown" (Reid 2016, 143).

In addition, understanding the efficacy of EU action requires attention not just to the individual laws but also the wider 'governance architecture' created by the EU. A defining feature of the EU environmental *acquis* is that legislation is backed up by mechanisms for monitoring progress, pursuing implementation deficits and, if required, taking enforcement action against member states, delivered by the European Commission, the EU Court of Justice (ECJ), and a host of other, specialist bodies (Broadway Initiative 2018). This machinery has promoted progress reporting, challenged slippage, held governments to account and cultivated policy learning (see Burns et al 2016; Hilson 2018; Reid 2016). EU environmental action and also draw on a series of legally enshrined principles, such as prevention, polluter pays, rectification at source and the precautionary principle (Treaty on the Functioning of the EU, Article 191). Part of the shifting policy context on which this study was conducted are the various UK government initiatives underway to replace elements of this governance architecture, such as the creation of a new environmental watchdog (DEFRA 2018) or watchdogs (Scottish Government 2018).[2]

The need for the UK to remain compliant with international environmental conventions will quite likely constrain the scope for policy change, post-Brexit (UKELA 2017; Hilson 2018). Examples include the Bern and Ramsar Conventions (on wildlife conservation), the Basel Convention (on international waste shipments), the Espoo Convention on transboundary environmental impact assessment, and the Aarhus Convention (on access to justice and information on environmental matters). The UK Government has expressed a desire to remain compliant with international environmental convention as we leave the EU. However, most international conventions are less detailed in their requirements than EU Directives and do not entail the powerful mechanisms for securing implementation and enforcement available to the EU (UKELA 2017).

2.4 Contestation

Any effort to evaluate the effects and effectiveness of EU environmental legislation in its

[2] RTPI has previously commented on the merits of cross-UK frameworks, see http://bit.ly/rtpi-brexit-devo

relationship to planning must recognise that the merits of such EU intervention have been contested (see discussed in Burns et al 2016).

Some of this contestation surrounds the extent and unevenness of any beneficial substantive effects. It is widely acknowledged that EU environmental policy has been pivotal in improving many aspects of environmental quality in the UK, rescuing it from the 1980s status of the 'dirty man of Europe' (Burns et al 2016; IEEP 2013).However, the improvements have not been uniform across all policy areas.

Regardless of the substantive effects on levels of environmental protection, EU environmental action can be subjected to various deregulatory arguments, which question the balances struck between environmental protection and other objectives, such as housing delivery and affordability, growth or competitiveness.

Disputes about sovereignty are another axis of disagreement, also amplified by Brexit. Who controls the policy process? Who says what the standards should be or how trade-offs should be struck? Depending on the stance taken, EU obligations may be seen as a useful aide to environmental improvement or a problematic containment of domestic freedom.

2.5 Devolution to National Governments within the UK

Devolution matters greatly to the subject under investigation. Within the UK, planning is a function devolved to the governments of Northern Ireland, Scotland and Wales, and many aspects of environmental policy are also substantially devolved. This has allowed each government to develop planning policies and interpret EU legislation in different ways. EU legislation has set overall frameworks that contain this divergence but, post-Brexit, any responsibility for developing 'Common Frameworks' falls back to domestic legislators (see discussion in Burns et al 2018). Devolution also matters because key actors and policy communities in the devolved nations may attach different priorities to the way that Brexit should be dealt with. In a number of spheres, the Welsh and Scottish governments have pursued environmental policies that are more ambitious than Westminster. Both were quick to express concern about the environmental risks of Brexit, upholding or improving on EU environmental standards is a key part of their position (Burns et al 2018), while in Northern Ireland devolved institutions have been in collapse through the course of this work. As a consequence, it is important to avoid implying that there is single 'UK' agenda for change for planning and the EU environmental directives, even though there are some issues that are common across the UK.

2.6 Conclusions

The above considerations have to be borne in mind when considering how the relationship between EU-derived environmental legislation and the planning systems of the UK should evolve, post-Brexit. As is also clear, the issues at stake are value laden and value judgements cannot be avoided. Such considerations are taken forward in the next section, where the intersection between EU environmental directives and planning are mapped, and views of their efficacy assessed.

3.0 The planning-environment interface: documentary analysis

3.1 Introduction

This section of the report is about understanding how EU environmental directives interface with planning, to identify where these relationships are working well, where there are problems, and where opportunities for change might lie. Together these insights can help to inform thinking about the options for reform that Brexit creates. The section begins by outlining succinctly the specific ways in which EU environment directives intersect with planning. It then considers previous analytical and critical reflections on this relationship, from government and political representatives, the RTPI, and wider academic and policy research. The assumption here was that future ideas for change might draw on past criticisms. Thus, the goal of the analysis was to tease out views on what was problematic, how arrangements might be improved, and to understand the underlying reasoning or evidence base.

The analysis is based on a number of strands of documentary research:

- Identification and analysis of the ten EU environmental directives prioritised for this study (as per Section 2.2 above [IEEP 2018]), the implementing regulations, and any research into their performance, especially as that pertains to the links to planning;
- Assessment of commentary on EU legislation and planning from government and political sources, including various red tape reviews and searchable post-2010 databases of ministerial speeches
- Assessment of RTPI consultation responses to policies related to EU Directives;
- Assessment of the wider academic and practitioner research.

An important theme to the analysis presented here is the need to distinguish between where EU directives specify certain substantive environmental *goals* (outcomes, such as targets) and where they specific certain *procedures*.

3.2 The legal background

To understand how EU environmental legislation and domestic planning legislation sit together, it is necessary to understand some basic legal issues.

In formal constitutional terms the environment is a ‘shared’ competence between the EU and Member States (TFEU Article 4) but spatial planning remains largely a national matter.EU legislation in this sphere can only be adopted by unanimity (Article 192(2), Treaty on European Union). The line has been blurred of course (Haigh 1987; Bond et al 2016; Muinzer 2016), and arguably should be permeable if planning is to perform an integrative goal across environmental, social and economic issues. But commentators have occasionally been keen to defend UK planning against incursions of EU action (Pickles 2012). This begs the question about whether the existence or perception of a ‘line’ between the European and the domestic has encouraged a split of responsibility between environment and planning that has been unhelpful to effective

institutional design.

A further issue is that European environmental legislation has been fitted onto a pre-existing system of planning and environmental protection in the UK that – if by no means perfect - was relatively mature compared to that in some other member states. Fitting onto existing legislation does not necessarily imply duplication. The EU environmental laws most pertinent to planning take the form of Directives, which specify the goals to be achieved but give Member States broad freedom as to the manner and form of implementation. This can involve the utilisation or adaptation of existing, domestic mechanisms, but in turn raises the question as to whether EU legislation or aspects of domestic implementation are the source of any perceived problems.

It is also commonplace to contrast the more formalised, 'regulatory' policy style of continental Europe with UK institutional cultures that hitherto have largely favoured discretion (Newman and Thornley 1996). A question that arises, after Brexit, is whether aspects of EU policy styles should be retained or even accentuated.

3.3 The connections to planning

Analysis of EU Directives shows that they connect to planning in a number of different ways.

Intersection 1: Environmental goals and planning as a means of meeting them

A central feature of many EU environmental directives is that they set environmental outcomes goals which the UK, as a Member State, is required to meet, viz:

Table 1: EU directives with substantive environmental goals

Directive	**Goals**
Ambient Air Quality	sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health
Birds	the protection of specified bird species at a favourable conservation status
Habitats	to enable the protection of specified animals and habitats at a favourable conservation status
Urban Waste Water Treatment	ensuring waste water from urban settlements is treated before being discharged
Waste	pushing waste management towards the priorities at the top of the waste hierarchy and away from landfill, with % targets for particular disposal routes
Water	ensuring water bodies attain 'good water status'
Marine Strategy Framework Directive	Member States are required to establish indicators and targets to guide progress to 'good environmental status' of their marine waters by 2020, with implications for Marine Spatial Planning

In turn, UK governments have given planning regimes an important role in achieving the goals of the Directives, which can be divided into pro-active and reactive roles.

Pro-active roles for planning regimes in achieving the goals of EU directives

Planning regimes have pro-active roles in helping to meet Directive goals through development planning and development management, by influencing the location, form, design and thereby the environmental performance of development, viz.:

Table 2: Using planning pro-actively to achieve EU-derived environmental goals

Directive	Planning Actions (examples)
Air Quality	The implications of development for air quality goals are material to plan-making and development control.
Birds	Incorporating Special Protection Areas in development plans and instituting protective policies.
Habitats	Incorporating Special Areas of Conservation in development plans and instituting protective policies.
Waste	Incorporating space for recycling activities within developments; promoting re-use of construction waste.
Water	Influencing the form and location of development to inter alia, manage run-off and flood risk.

Re-active mode of planning regimes in achieving the goals of EU directives

There are a number of areas where implementing EU policy requires the provision of facilities that, in turn, need some form of planning permission, thus giving planning a key role in regulating applications (reacting) but also finding sites (spanning pro-active and reactive roles), viz.:

Table 3: Planning reacting to the infrastructure requirements of achieving EU-derived environmental goals

Directive	Planning Actions (examples)
Urban Waste Water Treatment	Dealing with proposals or allocating sites for water management facilities, either separate facilities or as part of new urban developments.
Waste	Dealing with proposals or allocating sites for waste handling facilities (recycling, recovery and other processes), either separate facilities or as part of new urban developments.
Water	Dealing with proposals or allocating sites for water management facilities; for flood water storage, either separate facilities or as part of new urban developments.

One can legitimately question the effects and efficacy of the pro-active or reactive roles that planning may assume (see below), but the EU itself is not directly concerned with whether or not the planning system is effective in the supportive roles given to it, except insofar as it may be pertinent to the UK's success or failure in meeting the goals of the Directive. As discussed below, EU action on implementation and enforcement is more directly relevant to planning where directives make provisions with specific, direct implications for planning (e.g. as with EIA).

Intersection 2: procedures of environmental governance, and planning as a means of delivering them

In a number of areas, EU environmental directives have specific procedural requirements, and these interface with planning in two main ways.

Planning as one contributing actor

EU directives can require Member States to prepare national or other types of action plans in which they set down the steps that they will take to comply with the requirements of the Directive (see Table 3). Within these national plans, roles for the town and country planning system may be among the steps that get listed but (as above) EU Directives do not directly mandate that the planning system has a role – this is at the discretion of Member States. Typically the role of the planning system is to take relevant information from these plans and make links to the policies of development plans, but is not the main party for ensuring procedural compliance. This is generally statutory environmental bodies or government.

Table 4: Planning procedures required by EU environmental directives

Directive	**Plans contributed to/taken into account by local planning authorities**
Air Quality	Air Quality Management Areas
Waste	(National) Waste Management Plans
Water	River Basin Management Plans

Planning as prime delivery agent

For a relatively small number of EU environmental directives, planning is a prime delivery agent, and – for those activities that fall wholly within its remit at least – local planning authorities or other planning bodies are the main competent authority for achieving compliance:

Table 5: Where the planning system implements procedures required by EU environmental directives

Directive	**Planning Actions (examples)**
Environmental Impact Assessment	Directing the environmental information to be provided with an application, to ensure that its environmental effects can be properly judged, and demonstrably taking it into account in decisions
Strategic Environmental Assessment	Directing the environmental and other information to be provided alongside new development plans, to ensure that its environmental effects can be properly judged, and demonstrably taking it into account in decisions
Marine Spatial Planning Directive	Requires that when implementing Marine Spatial Planning, Member States should promote sustainable development and take into account sectors including transport, fisheries, aquaculture, climate change impacts and environmental

	protection.

One should also note how the EU EIA Directives have served to extend elements of quasi-planning oversight to forestry, agricultural and offshore operations, previously outside the planning system (Jordan 2002). The procedural requirements for other directives can also profoundly shape the operation of the planning system, notably the system of tests required for adjudicating development proposals and plans against the requirements of the Habitats Directives.

To summarise this subsection, planning intersects with EU environmental directives in a number of ways, both as the prime agent for delivering certain procedures (such as EIA and SEA), and by offering a suite of mechanisms by which the environmental goals of other directives can be achieved.

Such formal delineation of roles and intersections may not always be reflected in perceptions from practice. The specification of environmental goals and standards of EU Directives, and the transposition and interpretation of them by UK governments and other bodies, takes places largely or wholly outside the planning system. Nevertheless, where implementing the Directives becomes challenging – because it adds costs or constraints to development projects – much of this criticism can be strongly expressed within the planning system, and directed to those procedures that lie at the interface between EU Directives and planning. Teasing out what is actually 'causing' the problem requires more care, however.

3.3 Arguments for change

What then have various actors said about the merits of EU environmental directives and how they interface with planning, and does this offer any clues about where future post-Brexit improvements may be sought? This subsection looks first at the reflections of government and politicians, before considering views from the planning profession and previous reviews of environmental planning.

3.3.1 Government and political commentary

One area of commonality in the policy and political discourse that has swirled around planning in England and around EU membership lies in the concerns expressed about 'red tape' and the frequent calls for deregulation (Cowell 2017; Longworth 2017; TCPA 2018). This includes calls to reduce UK 'gold-plating' of compliance with EU Directives (Osborne 2011). Closer analysis of this material yields three main insights.

Firstly, for all the apparent pervasiveness of deregulatory and anti red tape discourse, the focus and format of this thinking is rather fragmentary. Ministerial or media commentary tends to focus on specific policy areas, with particular complaints being repeatedly recirculated. A ministerial reference to the Habitats Directive as 'spirit-crushing' is one example[3]; Boris Johnson's remarks about EIA and mitigation measures for newts (Johnson 2018) are another.

Actual assessments of 'red tape' tend to be highly partial in their framework for analysis. They tend to focus only on costs to business (or consumers) rather than wider social or environmental benefits, and to argue that 'when new rules are necessary they must be unashamedly pro-growth' (Business Task Force 2013, p.6) or pro-competition (see also IEA 2018). This is shored up by the

[3] From George Eustace, agriculture minister.

assumptions that it is clear, ex ante, that less regulation or more flexibility can entail no risks or costs to the public interests, unsupported by analysis. So, for example, the Business Task Force (2013) asserts that the UK's signatory of the Aarhus convention itself 'guarantees access to justice in environmental matters', which is a highly contested point (Simkins 2018). There are overlaps with opposition to certain EU principles like 'the precautionary principle', in favour of legislation that is 'evidence-based' or based on 'sound science' (see also Rees-Mogg 2018).

Secondly, when attention is turned to the substantive content of studies investigating the scope for deregulation, these rarely identify a large range of specific cuts. More developed arguments for a 'liberalised', free market future for the UK, post-Brexit, often opposing ongoing EU regulatory alignment, have tended to deliberately steer away from identifying specific environmental legislation that could be rolled back (IEA 2018; Farand 2018). In the Business Taskforce report *Cut EU Red Tape* (2013), environmental policy was not the major focus of business concern and aspects with a planning interface even less so. The main instance was opposition to the (then) most recent revisions of the EIA Directive for potentially pulling in and adding costs to small businesses. The Westminster, cross-party Red Tape Initiative, looking for 'regulatory adjustments that could benefit both businesses and their employees' (Red Tape Initiative 2018, p.1) and provide quick wins, post-Brexit, also yielded little with direct relevance to planning.

Where specific EU environmental directives have been reviewed, evidence that regulation has been 'excessive' or 'gold-plated' is scant, with recommendations focusing on procedural aspects of implementation rather than the regulatory requirements per se. This has been the case with UK (HM Government 2012) and EU 'REFIT' reviews of the Habitats Directive, the former recommending streamlining guidance, improving the quality, quantity and sharing of data, but also measures to help 'nationally significant infrastructure projects' navigate the 'need' tests of the Directives, where protected species and habitats may be affected.

However, the Red Tape Initiative (2018) did give examine the conservation requirements of the Habitats Directive, specifically for great-crested newts and bats, in ways which linked procedures with the ultimate goals of policy. In line other red tape reviews, the Red Tape Initiative did not end up disputing the conservation goals; any regulatory burden was found in the complexities of implementation. Reference was made to measures already underway to make procedures and actions simpler for developers where their projects affected newts. But there was an acknowledgement that the scope for flexible solutions varied between species: in the RTI's words, bats are 'less flexible than newts' (2018, 15) in the geography of their lives. The important point here is the need for care in how generalisations are made from specific implementation situations to the wider legislative framework.

3.3.2 Reflections from the RTPI

The RTPI's archives of consultations responses were searched and analysed, covering those from Northern Ireland, Scotland, Wales and England focusing on responses made directly to proposed EU legislation or, more commonly to governments' proposed implementing regulations and guidance, and commentaries on other EU-related environmental agendas. The key insights are as follows.

The overwhelming tenor of the RTPI's consultation responses is positive i.e. it is supportive of the new legislation and the consultation responses tend to press, constructively, for ways to improve

the environmental outcomes. In some cases this represents a change of position. Back in the 1980s the RTPI was critical of the (then) proposed EIA Directive (Haigh 1987; Weston 2011); citing the UK's long-established planning system as a reason why the proposed directive was unnecessary. However, by the 1990s, EIA was regarded by the RTPI as 'a success'[4].

The RTPI tended to suggest ways in which the domestic implementation of the Directives could be improved:

- Becoming more comprehensive in their coverage (e.g. widening criteria for including developments within EIA screening based on site sensitivity rather than project category/size), or more systemic or 'holistic' in their treatment of the environment e.g. the Marine Strategy Framework Directive (MSFD);
- Pushing proposals for greater institutional or procedural integration e.g. between planning and water management in relation to the Water Framework Directive; between planning and pollution control in relation to successive industrial emissions directives; between requirements for Appropriate Assessment under the Habitats Directive and EIA; commenting on the problems that Northern Ireland's fragmented government structure would face in implementing the MFSD;
- The RTPI expressed support for the EU's firm goals (e.g. 'good status' with the MFSD) and took stances that explicitly or implicitly share the EU's precautionary principle e.g. seeking to widen the array of projects that might be subject to EIA because of their potential environmental impacts; defining 'good ecological status' in the Water Framework Directive.

Importantly, but less frequently, the RTPI expressed support for, or pushed for more action on provision for public participation. Often this was linked to arguments for procedural integration between planning and aspects of environmental policy (pollution control, water management, nature conservation issues in agriculture) where decision-making procedures have been less open to public engagement than is the case in planning.

There are remarks that focus on issues of overlap, cost and potential problems, but these tend to be fewer and the research encountered no instances where straightforward duplication between planning and environmental regimes was mentioned. Rather:

- It was remarked where new Directives would have few *new* implications for planning (e.g. Waste Framework Directive) or where EU provisions would build on existing UK practice (e.g. River Basin Management Plans from the Water Framework Directive building on Local Environment Agency Plans).
- There were complexities and confusions about how EU requirements would fit to planning (e.g. how EIA provisions would apply to activities that were permitted development, e.g. in agriculture; how it related to existing provisions for securing information prior to planning consent decisions); how SACs and SPAs relate to Marine Conservation Zones under the MSFD), but these were presented as issues that needed sorting out.
- On occasion, it was noted that taking steps to meet the Directives would have cost implications, though most often in terms of local planning authority resource constraints.

[4] RTPI Response 10th October 1997.

- While the RTPI did express support for streamlining and simplification this was usually directed to the format of guidance rather than the underlying policy (e.g. Habitats Directive guidance, EIA screening procedures).

One of the main effects of the RTPI's submissions is to question the approach of the UK Government towards EU Directives, which was seen as taking a minimalist, compliance-based approach (Howarth 2009) rather than taking the opportunities for driving environmental improvement. This quote on the approach to implementing the MFSD illustrates this very well:

> 'We are concerned that the consultation document and supporting information focuses almost exclusively on the potential costs and economic impacts of the Regulations almost to the actual exclusion of the aim of the Directive to achieve Good Environmental Status. There is little focus on or explanation of the benefits that the Directive is intended to deliver for the marine environment across Europe's seas.' (From NI response)' ... 'There should be greater emphasis on the statement made in the MSFD around the promotion and integration of environmental considerations into all relevant policy areas and "deliver the environmental pillar of the future maritime policy for the European Union".'[5]

The only sphere where costs to developers was noted was in relation to EIA, who were believed to suffer 'little tangible gain for the time and expense incurred', though with recognition that EU rules serve in 'levelling the costs playing field for developers across Europe'.[6]

3.3.3 Previous comprehensive reviews of environment and planning

A remarkable finding from the documentary analysis is how little consideration has been given to the interface between planning and EU environmental legislation, or indeed to environmental issues more widely. A remarkable finding of the documentary analysis for this research is just how little attention these questions have attracted. There are studies of the Europeanisation of UK environmental policy, which also cover planning, as well as voluminous commentaries on individual directives, as the sections above have shown. There has been little overarching examination of the planning and environmental interface, bar two obvious exceptions.

Back in 2002, the Royal Commission on Environmental Pollution assessed the state of 'environmental planning' in the UK, with an express concern for how a complex and fragmented set of arrangements might be better integrated in the service of sustainable development (RCEP 2002). The recommendations for greater integration may now find a policy window (Kingdom 2003 for closer consideration, post-Brexit. However, although the RCEP recognised the importance of EU measures to environment and planning in the UK, the report assumed that they were a fixture, or at least raised no concerns that EU requirements per se created a procedural burden.

The same might be said for the Foresight Land Use Futures Project (2010). Here to attention was drawn to the complexity created by a multi-level system of governance for land, including for systems of land designation, but this feature was largely accepted. More attention was given to issues of sectoral integration, and how addressing that might foster a more over-arching and comprehensive approach to the treatment of land, able to meet multiple goals.

[5] RTPI responses 8th January 2010 (Northern Ireland) and 22nd January 2010 (London office).
[6] RTPI responses 28th January 1998 and 12th March 1998.

3.4 How effective is EU environmental legislation?

Analysis of existing commentary around EU environmental directives and the interface with planning has identified relatively few clear areas where change may be desirable. An alternative approach is to look at existing research that has reviewed the effectiveness of the directives in achieving their goals - this is the task of this section of the report. The analysis focuses on aspects of the Directives that interface with planning (so, for example, it does not consider issues around agricultural water abstraction licensing with the Water Framework Directive, or packaging requirements in the Waste Framework Directive, etc) and, where possible, seeks to tease out the contribution made by planning regimes.

The issue of effectiveness is treated as multi-layered. First, attention is given to how well EU environmental directives have achieved their goals and the wider impacts, looking at successes and problem. It then turns to looking at factors that help to explain and interpret 'success' or 'failure', which bear upon potential opportunities for change, post-Brexit.

3.4.1 Efficacy in achieving positive environmental outcomes

Many previous studies have concluded that EU environmental legislation has contributed significantly to improvements in environmental quality in the UK (Burns et al 2016; IEEP 2013), notably the following:

- Air quality directives have contributed to improvements in air quality across a range of pollutants.
- Waste directives have contributed to a reduction of landfilling of waste and increases in recycling
- The Habitats and Birds Directives have contributed to the conservation of the species and habitat types listed (Donald et al 2007), reducing the annual loss rate of protected areas compared to domestic, UK legislation (Fairbrass et al 2011; LINK undated).
- Directives for water environments have contributed to improved quality, particularly chemical quality of many water bodies.
- With the Marine Directives, it is largely too soon to ascertain the net and additional effects of EU action on UK practice and outcomes in this area, though there are positive outcomes that can be attributed to the extension of Habitats Directive designations to marine conservation areas (Stewart 2016).

It is noticeable that these areas of success are associated with those EU environmental directives which set clear goals. Indeed, having 'hard-edged' environmental outcome-based obligations, with timetables for achieving them, is widely regarded as a defining feature of EU legislation vis a vis traditional UK discretionary approaches, and that this in turn facilitates the firm implementation action that has led to substantive environmental improvements (see Burns et al 2016; IEEP 2016). It is easier to identify and challenge whether government's have met specific environmental outcome obligations, than whether they have sufficiently 'hard regard to' them. The durable, cumulative nature of EU legislation is also a factor (Morphet 2017).

The effects of directives that are procedural in their requirements are necessarily more difficult to interpret, but there is nevertheless a voluminous research literature on EIA and SEA.

There is evidence that EIA has been influential on development outcomes, and that this is attributable to its component processes: the provision of information and the facilitation of scrutiny by planning authorities, publics, civil society organisations and statutory bodies (Arts et al 2012; Glasson et al 2012; Wood and Jones 1997). These processes have led to modifications to projects, resulting in reductions in negative environmental impacts (Wood and Jones 1997; Glasson et al 2012). EIA has also enabled the early identification of problems, facilitating mitigation measures (Blackmore et al 1997; see also Arts et al 2016). Such effects have mostly been modest in significance, however, on occasion EIA processes have contributed to the refusal of damaging proposals (Cowell and Owens 1998). Many benefits may arise from the project design stage, prior to the seeking of planning consent.

Similar claims have been made for SEA. Rarely, in the early days, did SEA in practice deliver the ideals of comprehensive assessment or public engagement (Jones et al 2005; Owens et al 2004). Nevertheless, planners have reported that appraisal has fostered greater understanding of plans and sustainability issues, improved transparency in plan-making, and learning for future plan revisions (Glasson et al 2012). SEA has led to plans being modified, albeit by fine tuning of policies rather than changes in strategy (Smith et al 2010). Commentators also point to improved accountability. Sheate (2012) analysed National Policy Statements for energy and ports as well as planning policy statements on eco-towns, concluding that SEA had provided an arena for public and interest group participation and for assessment of policy measures that might otherwise have escaped scrutiny. A key point of challenge, facilitated by the Directive, concerns assessments that have failed adequately to consider 'reasonable alternatives', leading to certain prospective policies being revised or even withdrawn (Glasson et al 2012; Sheate 2012). Major development strategies promoted by central government feature among those that have been challenged for their compliance with the SEA Directive (including the Oxford-Cambridge corridor [CPRE 2018]), an important issue when considering the merits of new, independent environmental watchdogs.

As well as these physical outcomes, EU environmental directives have helped to deliver more transparency and accountability in policy- and decision-making. This applies to the whole governance architecture, with EU Directives often bringing with them requirements for Member States to monitor and report on progress (Broadway Initiative 2018). Improved accountability can also be attributed to EIA and SEA, in the requirement that decisions – whether for or against – are justified in relation to environmental effects, and for creating an aperture whereby aspects of pollution control are open to wider public scrutiny (Haigh 1987; Sheate 2012).

Mention should be made at this point to the Aarhus Convention on 'Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters'. Both the EU and the UK are signatories to this convention, which emanates from the UNECE, but for Member States then EU institutions like the ECJ have an important role in interpreting and securing compliance. Particular EU Directives like those on EIA serve, in part, to help implement the Aarhus Convention. The most tangible area where the EU has strengthened implementation of the Aarhus Convention is with the standing of environmental organisations in representing legitimate public interests, and UK governments have been forced to improve financial protection for those bringing environmental cases before the courts (Maurici and Moules 2014; ENDS 2015).

With EIA, it is an often-debated point as to whether the directives' minimum benchmark requirements for the impact information to be provided go beyond what could have been achieved

through information requests under UK planning legislation (see discussion in Haigh 1987). Evaluating such effects also depends on the worth attached to formalisation and standardisation that EU legislation achieved, as discussed below.

When it comes to teasing out the efficacy of *planning* as a mechanism for delivering on EU environmental directives, issues of additionality and causality raised in Section 2 start to surface.

The clearest effects of planning in achieving EU Directive goals are where the direct regulatory powers of planning provide an important mechanism. With the Habitats and Birds Directives, for example, one can point to numerous instances where potentially damaging planning applications have been refused, extant permissions revoked , and where more extensive mitigation measures have been provided for projects and plans that have proceeded (Bishop et al 2000; Cowell 2000; Wilson 2009). The firmer tests of the EU directives have enabled more weight to be given to conservation concerns in planning decisions than domestic legislation, and the effects of planning actions can be traced into 'loss rates' for designated areas.

However, there are many areas where – as noted above - the interface between planning and EU environmental regulations is less direct and less specific, and these are often areas where the research is thin. When it comes to many aspects of water quality and air quality, possible impacts on these parameters are just one of the many implications that the planning system considers when making decisions, which remain a balancing process. While much has been made of the *potential* benefits of close interaction between planning and the River Basin Management Plans of the Water Framework Directive (White and Howe 2003), there has been little research on how far RBMP have been influential on development plans or vice versa. Similarly, although the planning system is important in shaping the availability of sites for infrastructure required under EU Directives (e.g. water treatment facilities) there is no systematic research to show whether the relationship has been productive or problematic.[7] In all such cases, planning actions are just one element in a complex network of cause and effect.

3.4.2 Problems in achieving goals; problems with the goals

Even where environment improvements can be demonstrated, there are a number of areas where the UK has not fully achieved the goals of EU environmental directives, for example:

- Under the Ambient Air Quality Directive, there is a failure to achieve NOx targets, with problems arising from traffic especially, in a number of urban settings..
- Under the Water Framework Directive, there is the likely failure of the UK to achieve certain water quality goals, especially for ecological quality and surface water bodies by 2027, itself an extension of the original time frame.
- The UK has also been subject to infraction proceedings for the Urban Waste Water Treatment Directive (IEEP 2018).

For evidence of failure, one might point to the number of infraction proceedings undertaken by the EU. Indeed, '(e)nvironmental law has been the area where EU bodies have had to be most active in securing compliance with the law' (Reid 2018, 128). However, the scope for complaints to be

[7] The main area where there has been analysis of the effects of planning on the delivery of infrastructure required to meet the goals of EU directives is for the Renewable Energy Directive, but this is not the focus of analysis here.

brought to the European Commission and ECJ, and the powers available for remedial action, point to the importance of this wider EU governance architecture, which is danger of being lost through Brexit. The complaints brought by Client Earth about the UK's failure to comply with the Ambient Air Quality Directive are a case in point.

As noted in Section 2, the merits of EU Directives have themselves been contested, often precisely for the obligations they impose and for the means of accountability they create. The idea that via EU legislation individuals or organised groups may be able to complain about government (in)action on substantive grounds has been seen as a benefit by some and problematic by others.

There are instances where it is claimed that meeting the requirements of the directives is attained at costs that are excessively high compared to the benefits. Such claims can arise where directives require costly physical investments (e.g. UWWTD, WFD) or where directives are perceived as imposing constraints or costly mitigation measures on development. Such concerns are associated with the Habitats and Birds Directive, where part of the regulatory review literature discussed above involved extensive analysis seeking to ascertain the extent of any restrictions imposed (see above). One needs to view claims about impacts in an evolutionary context, whereby past problems have been addressed. Without commenting on the environmental merits, the UK government has taken actions to help Nationally Significant Infrastructure Projects navigate the 'need' test where they would damage European wildlife sites.

3.5 Explaining success and failure

In order to make clear judgements about possible changes, post-Brexit, it is necessary to acknowledge the factors that influence success and failure with EU environmental policy. There is a vast literature dissecting the performance of environmental policy and planning, and it is impossible to review it any detail here, but the following points are especially important.

The nature of the problem

Some environmental problems are intrinsically more difficult to resolve than others, and so present bigger challenges to the design of effective regulation. A classic example is that point source pollution (a power station) is easier to regulate than diffuse pollution (e.g. from agriculture). Indeed, implementation problems may be increasing as the EU seeks to embrace and achieve more complex goals – e.g. moving from reducing landfill to creating circular economies; from protecting bathing water to more all-encompassing goals of the Water Framework Directive . As EU legislation has itself evolved, from issue-specific Directives towards more holistic 'framework directives', analysts have wondered whether the injection of more procedural modes of compliance dampens their regulatory effect (see Howarth 2009), especially where they give more discretion to Member States (Hilson 2018).

The social and political context

For all the debate that surrounds the technical merits of particular policy instruments, their efficacy in practice can be more profoundly shaped by social and political factors that shape the context of implementation.

One obvious example is the way in which national governments choose to interpret EU legislation and transpose it into domestic regulations. National governments may seek to implement the

Directives in ways that are more ambitious than the EU Directive requires, with a view to achieving environmental improvements, or take a minimalist compliance-based approach (Arts et al 2012; Howarth 2009). The devolved governments have varied in their approach to transposing of EU Directives, for example:

- On EIA, Scotland and Wales have instituted lower size thresholds for projects that might require assessment compared to England (see also Bond et al 2016);
- On SEA, Scotland has not followed England and Wales in implementing SEA through objectives-led sustainability appraisal (SA), but has extended SEA to all public plans, programmes and policies that fall within the Scottish Government's remit (Jackson and Illsley 2006)
- On the Water Framework Directive, Scotland has embraced a wider set of waters within the ambit of the directive.
- On the Waste Framework Directive, Wales has higher targets than in England, which follows the targets of the Directive.

The impacts of national governments have been much discussed in the context of SEA. The proposed Directive sought also to apply SEA to policies, but this was opposed by a number of Member States, including the UK. The requirements of the Directive have also co-evolved with longer-standing procedures (in England) for the Sustainability Appraisal (SA) of plans, including economic and social as well as environmental objectives, creating some concern that environment goals are marginalised (RCEP 2002; Jones et al 2005; Law Commission 2018; Morrison-Saunders and Fischer 2006). Scotland has avoided these concerns by focusing on SEA alone Jackson and Illsley 2006).

The agency of planners and developers can affect the environmental benefits of EU environmental legislation as indeed they can affect the outcomes of planning (Lipsky 1980). For example, whether EIA and SEA/SA deliver positive outcomes for the environment depends very much on whether developer/applicant and/or planning authority are keen to use them as pro-active tools for environmental improvement, or as a minimalist, bolt-on compliance exercise (Weston 2011). Analysis of other Directives has found planning authorities not requesting, say, air quality assessments, raising issues of consistency.

Civil society is also important. Whether the various public engagement, monitoring, reporting and accountability mechanisms associated with EU environmental governance have any effect depends on whether there are organisations with the capacity and willingness to use them. Moreover, there are critics that would say that fostering engagement, by creating participatory rights, in practice does little to effect change – and may help to divert attention from – the underlying distribution of power (Moini 2011). Rights to participate need connecting to what it is that is up for discussion, which makes things like environmental standards (against which states could be held to account) very important.

Deeper commitments to growth and competitiveness

Certainly, EU environmental policy is susceptible to the critique that it does too little to tackle the fundamental drivers of environmental damage in growth, competitiveness discourse and growing travel demands – drivers which other EU policies, often also with the support of Member States,

serve to promote (Franz and Kirkpatrick 2007). The way that the Common Agricultural Policy has driven production intensification to the detriment of the environment is a case in point. Viewed in this context, the environmental agendas promoted by EU legislation tend towards the 'light green', in that they mitigate rather than challenge unsustainable demands (see for example Ioris 2008; Herbert 2018).

3.6 Conclusions

The analysis presented here shows that the interface between EU environmental directives and planning varies in form and intensity between Directives and environmental policy area. Planning is essentially an aide to implementation for many directives, only becoming the prime delivery agent for EIA and SEA, with the regulatory and strategic planning powers of the system also being important with the Habitats and Birds Directives. The relevance of EU directives also varies between categories of development, with the joint effects of EU environmental directives and planning being most apparent for major, complex infrastructure projects and for plan-making.

Previous and commentary around the planning/ environment interface gives us relatively little indication of where we might head in future, or where particular problems lie. Voluble calls for cutting EU red tape have not generally been matched by the identification of a large range of specific actions that could be cut. Consequently it may be a mistake to assume that there is considerable unexplored scope for regulatory simplification, post-Brexit.

However, there could be interpretative problems with this deduction. The absence of detailed prior commentary may reflect the fact that most parties have assumed that EU membership and therefore compliance with EU legislation was the future and this has framed their thinking.

This deduction also assumes there can be a clear separation from EU environmental legislation and a host of other factors that affect how planning, in concert with others, affects environmental outcomes. EU environmental legislation has been effective because it adopts a regulatory form, focused on clear goals, that aides monitoring and enforcement, backed up by robust EU mechanisms for doing so. Questions thus arise as to the merits of retaining or recreating these regulatory features post Brexit.

The documentary analysis has also indicated that it is difficult to disentangle the effects of EU legislation from the various policy-making, political and social factors that affect implementation (see also Arts et al 2012). It is far from clear that problems derive from EU legislation in any narrow sense. Given this, Brexit might be best viewed as an opportunity to addressing wider issues around the interface between environment and planning in the UK, including those that have home-grown causes.

4.0 The planning-environment interface: perspectives from the profession

4.1 Introduction

An important goal of the research was to understand how planning professionals from across the sector viewed the relationship between EU environmental legislation and planning. To address this task, data was gathered from a series of interviews and focus groups, involving. senior individuals from across the planning, development and environment professions, as detailed in Section 1.

The findings are presented below, organised into three sections: first an assessment of views, both positive and negative, on how EU environmental legislation and planning worked together; secondly, a review of responses to sets of specific propositions for potential change as well as broader scenarios for how the planning-environment interface could evolve, post-Brexit (see Appendix 1). Attention is given to the main patterns in the responses, as well as key areas of disagreement and concern.

4.2 Perceiving Europeanisation

4.2.1 EU environmental legislation is generally viewed positively

Most respondents were firmly of the view that EU membership had underpinned significant improvements in environmental quality and raised levels of environmental protection, drawing attention to a series of substantive effects. Respondents referred to the significant clean up of rivers and beaches, air quality improvements, and to areas of biodiverse landscape that would otherwise have been built on. There was clear reference to the causal effects of the EU in attaining these effects, with respondents observing that earlier, domestic legislation (such as the Wildlife and Countryside Act 1981) lacked teeth by comparison, and that UK governments could have acted of their own accord but did not do so. EU legislation had tended to raise the profile of thresholds and carrying capacities as environmental planning concepts.

Respondents explained these effects with reference to specific legislation and to the wider capacity that EU institutions possessed for driving implementation. In particular, they pointed to EU action being arms-length from national, political pressures, and with the genuine threat of fines for infractions.

Respondents appreciated certain qualitative features of EU legislation, such as its purposive nature, its basis in scientific assessment of some form, the (generally) clear objectives and its durability compared to national political levels (Gravey and Jordan 2016), especially in England. Altogether, it was less easy to override and less subject to short-termist pressures. To this extent, interview and focus group data echoed wider analyses of the effects of EU membership on the UK environment (Burns et al 2016).

4.2.2 Caveats and concerns with EU-derived legislation and processes

These generally positive views were qualified in a number of ways. For a few, the fact that environment directives set tight constraints and prescriptive legal requirement could itself be a problem, as it diminished the scope for work-arounds and flexible solutions. Some saw the tests of the Habitats Directive as being too rigid, especially as they were attached to the EU's regulatory style of governance, perceived as allowing insufficient discretion where designated species or habitats were concerned. The way this rubbed against UK discretionary norms recurred as a concern; though with acknowledgement of positive outcomes in some areas, such as air quality. Meeting the procedural requirements of EU Directives – with what was perceived as an emphasis on compliance - was also seen as deflecting attention from achieving enhancement and improvement.

While there was consistent support for measures that had achieved substantive environmental gains, there was more diversity of view and equivocation on the effects of specific procedures, with EIA and SEA attracting much discussion. Perceptions that procedures could be bureaucratic, complex, disproportionate and costly were commonly expressed, linked to concerns that positive outcomes were not always obvious.

Respondents referred to the uncertainties arising from, for example, screening and scoping decisions attached to EIA, and questioned whether procedures - already perceived as onerous - were appropriate in all circumstances.

Respondents also discussed the trade-offs inherent in the creation of standardised, cross-European rules. For some, this created interpretive difficulties in applying pan-European requirements to the specific characteristics of the UK planning system, to different categories of development (each with their own regulations) or to the diversity of more localised circumstances. Others expressed concerns that EU legislation tended to manifest itself in 'one size fits all' procedures (such as the tests for the Habitats Directive). Such procedures were perceived as especially unwieldy or inappropriate when applied to 'the small' – i.e. projects or decisions perceived to be small in size or in likely effects. In the focus group discussions, Respondents also recognised risks in such lines of thinking – i.e. that notionally small projects can still have major environmental effects, ether individually or cumulatively, which needed to be considered.

Some respondents also reflected on the more fundamental worth of procedures mandated under requirements, such as SEA (and Sustainability Appraisal) or EIA per se. Given that planning legislation also empowers local planning authorities to request sufficient environmental information before making a decision, respondents discussed whether a full EIA is always necessary. Assessments were perceived as potentially at risk of being tick-box exercises.

However, having standardised, formal regulatory requirements was seen as providing a valuable backstop, and for driving consistency of practice across local authorities: Indeed, this was a common line of thinking about the value of EU legislation for procedures – that it created consistency, across time and space, and across planning contexts where the politics of development and attentiveness to environmental impacts could vary significantly. EIA also provided a robust setting in which substantive environmental standards, such as for air quality, could be brought to bear on the more significant development proposals.

4.2.3 But what to change?

A further major recurring theme of the interviews and focus groups was that few precise suggestions for change were made. This is despite the researchers pressing respondents specifically (and often repeatedly, in different ways) to consider ways in which, post-Brexit, it might be desirable to change aspects of EU environmental legislation as they pertained to planning. A number of reasons can be given for this.

Difficulties in attributing the cause of problems

Respondents rarely attributed difficulties they experienced with EU-derived environmental legislation and planning procedures to the legislation itself. The main example in which they did so was the concerns expressed about the interpretive uncertainty of key terms: e.g. what makes a 'significant effect'? In other cases the complexity was seen as coming from transposition, where EU requirements get translated into national, domestic regulations. The variation of EIA regulations across different categories of project, between those governed by Town and Country Planning legislation and others, created complexity that generated inconsistencies and needed careful negotiation. With SEA, some respondents attributed problems to the guidance, but also to tendencies to follow it slavishly in all circumstances rather than fitting it to the specific situation. Respondents raised frequently the problems with monitoring and enforcement, for example of mitigation measures, but such issues are more about domestic implementation than the Directives *per se*. Risk aversion (to judicial review) was seen as affecting both transposition and implementation.

In some cases, problems were perceived as arising from weaknesses and inconsistencies in practice rather than in the Directives and what they were trying to do. A key dynamic in many responses (and from the wider literature) is that EIA and SEA can be valuable drivers of improvements to projects and plans where used pro-actively from an early stage. Treating them minimally, as a bolt-on exercise purely to meet the regulations, will likely ensure that they add little. Respondents from the Scotland identified the Scottish Government's creation of their 'SEA Gateway' as a useful vehicle for enhancing practice and learning across the sector (Jackson and Illsley 2007), which has no equivalent elsewhere in the UK.

A widely-mentioned mediating variable was that implementation problems could be exacerbated where planning authorities and other bodies lacked resources and/or experienced staff. This was pertinent to a key recurring concern about EU-derived legislation – the growing scale of environmental impact assessments - where inexperience was perceived to drive risk aversion leading to more frequent or larger-than-necessary environmental assessments being conducted (see text box below).

Text Box 1: Proportionate EIA

When asked about the effects of EU environmental legislation on planning, respondents often refer to the growing scale of EIA documentation. There is clearly an issue here. If EIA is designed to facilitate informed decisions and wider transparency, then it is problematic for environmental statements to expand to the point where few are able to read and assimilate the information they contain. However, few attribute the problem to EU requirements, with suggestions pointing instead to the need to be better at scoping out unnecessary areas of assessment which, in turn, requires qualified practitioners to make good judgements (IEMA 2017).

Reducing the scale of ES is undoubtedly challenging, with legal experts still regularly advising developers that submitting a 'more complete' environmental assessment can reduce potential legal challenge and uncertainties downstream. Moreover, one driver of 'complexity' is that the scope of legitimate public concerns has tended to increase. Respondents to this research often supported the move to include health impacts and climate change adaptation in EIA and the increased attention given to air quality effects.

Ultimately, ameliorating the issue and moving forward requires key principles to be confronted. In particular, the precautionary principle (how much information is sufficient for decision-making and where is it likely to be unnecessary?); authority (who can decide this?); and accountability (what arrangements are made for judgements on adequacy of information to be challenged?). This is discussed further in Section 6.2 below.

For some respondents, the problem was framed in terms of social interactions around development proposals, with EU Directives providing 'loopholes' or 'tripwires' that actors can exploit because of their specific, regulatory requirements. Some suggested opponents to development (represented as middle class or NGOs, or lawyers and consultants) most often exploited these opportunities. For others, the key issue was developers exploiting any softening of requirements.

These findings suggest that there are a whole variety of areas where fresh thinking would improve the relationship between planning and environmental regulation and tackle some enduring concerns. Brexit might provide a triggering opportunity to think afresh about this issue, but that the easing of EU strictures is not necessary for this to happen. As discussed below, the devolved governments have already been evolving new approaches to planning and environmental governance within the framework set by EU membership.

Counterfactuals – UK environmental governance without the EU

If the UK was shorn of the requirement to comply closely with EU legislation, then questions arises as to what if anything might replace it and whether that replacement would address concerns with EU-derived measures? This raises the issue of counterfactuals, which emerged in two ways.

1. Where respondents felt that the imposition of EU legislation did overlap with terrain covered in UK legislation it was acknowledged that UK legislation would in any case have needed to become more precise and comprehensive in what it covered (e.g. EU EIA legislation and UK town and country planning legislation; or the Birds and Habitats Directives and domestic wildlife legislation). In the case of wildlife legislation – UK legislation would need to tighten the level of protection given.

2. If the UK went for a form of Brexit that meant that EU legislation no longer applied directly to the UK, respondents still felt it necessary for the UK to draft laws or regulations to cover the relevant issues, with a high likelihood of broad similarity with EU law, and no immediate belief that domestic drafting would necessarily be better. Whatever problems may arise in practice (or erupt from particular European Court of Justice judgements), the basic wording of EU legislative requirements was rarely identified as the sole cause of problems.

EU legislation and consistency across space and time

There was some optimism about the scope that Brexit might bring for new policy flexibility at national level, but respondents also articulated the merits of consistency. One facet of this was the way that the consistency of EU legislation provided a backstop which militated against divergence in local authority or national implementation practices.

Another facet of the importance of consistency came from economic sectors like the minerals industry. Here respondents were supportive of maintaining EU regulatory standards, because this would underpin consistent standards *vis a vis* our European neighbours, prevent adverse competition from the undercutting of standards, and underpin frictionless, cross-border trade (see also MPA 2018).[8] That is not to say, however, that respondents widely believed that approaches in other countries to adopting EU legislation achieved a high degree of consistency.

The issue of consistency also arose concerning the relationship between environmental legislation and planning across the devolved nations, where respondents recognised some dilemmas. They reported that divergence in planning approaches arising from devolution was an established fact, and that there were positive merits in arrangements that allowed parts of the UK to demonstrate best practice and search for locally-appropriate solutions. Furthermore, respondents also recognised that some of the devolved nations had taken a deliberate political stance on retaining close regulatory alignment with the EU, notably Scotland (Scottish Government 2018). However, at the same time it was recognised that cross-national collaboration would be desirable where issues required consistent intra-UK treatment, for example in addressing cross-boundary problems of an environmental or environment-trade nature, making things simple for developers and avoiding 'race to the bottom' deregulation.[9] Whether these needed to include planning matters, in the narrow sense, was sometimes disputed.

In sum, the qualitative primary research echoes strongly the findings of the earlier desk analysis, that there has been very limited reflection on the future interface of environment and planning, at least in England (TCPA 2018), and the EU referendum and its aftermath have yet to trigger much close examination. Given the observations on attribution, counterfactuals and consistency, perhaps this is unsurprising. And in the very short term, with all the turbulence and uncertainty of the Brexit process itself, one can well understand why most key actors have been consumed with maintaining the continuity of existing legislation and repairing gaps in future governance arrangements. Indeed, concerns were frequently expressed that domestic legislation should not be tweaked until more fundamental uncertainties of the Brexit process are resolved.

If specific complaints about EU legislation were relatively few, respondents directed much more

[8] Similar concerns have been identified in other research examining the waste and resource sector (Cowell et al 2017).
[9] RTPI has previously commented on the merits of cross-UK frameworks, see http://bit.ly/rtpi-brexit-devo

attention to the wider governance system in which planning and environment sat, and broader political agendas for change, which brings us to debates about future scenarios.

4.3 Future scenarios

Both interviewees and focus group participants were asked to reflect on a number of scenarios for the future evolution of planning and environmental regulation, the interface between them, and the wider governance system they sit in. After going through a number of iterations (see Cowell 2018), a four-fold typology of scenarios was created for pathways that future planning-environmental governance could take. The labelling given below was deliberately simplistic and provocative in order to prompt discussion, but they were backed by more detailed written descriptors (see Appendix 1).

Table 6: Typology of scenarios - future evolution of planning and environmental regulation

Direction of change	Goals	Process
"Remaining/becoming more European"	1.Retaining firm environmental goals and standards; firm time frames for implementation	2.Robust arms-length oversight of implementation, 3rd party rights/complaints for non-implementation
"Becoming more domestic"	4.More scope to soften goals, or make exceptions, at discretion of local and national decision makers	3.Firm goals remain, but more flexibility given to local and national actors as to how goals are achieved

One might have labelled the 'becoming more domestic' direction of change as 'environmental legislation also becoming more like domestic planning legislation', with its tradition of allowing considerable scope for discretion, 'balance' and trade-offs, political accountability and the flexibility of enforcement (see Cowell 2017).Discussion of these scenarios in the focus groups generated interesting patterns.

Much positive support was expressed for Scenario 1: 'retaining firm environmental goals and standards'. This is perhaps unsurprising, given that wider views about the positive dimensions of EU membership discussed above focused on substantive environmental improvements. Respondents frequently expressed their distrust of politicians, using this as a justification for regulatory arrangements that restricted political discretion. EU-style legislation was supported precisely because it comes with statements of purpose and creates 'red lines' and 'harder edges' (Burns et al 2016), which UK planning legislation tends to lack. The limited domestic capacity for enforcement was also a concern.

Scenario 1 also intersects with important trends emerging from the documentary analysis towards a goal-centred orientation to environmental governance. Emerging UK government moves to create new governance frameworks to replace the functions of the European Union (DEFRA 2018), along with aspects of the 25 Year Environment Plan (HM Government 2018), bring with them a strong emphasis on environmental goals, monitoring and enforcement and – importantly – the proposals raise the possibility of embracing planning (Rickets 2018). Respondents recognised

these trends to link the planning system more closely to the delivery of goals. In Wales, steps are underway to tie in planning to the well-being goals of Future Generations legislation. In England, the 2018 revisions of the National Planning Policy Framework (MHCLG 2018) firm up the role of planning in improving air quality and meeting limit values, and take forward 25 Year Environment Plan goals of achieving 'net environmental gain'[10] more widely. In turn, a system of clearer goals and outcomes could inject clearer purpose into EIA and SEA.

What was less expected, was that respondents' support for Scenario 3 ('more flexibility to local and national actors as to how goals are achieved') would be nearly as strong as for Scenario 1. Respondents often referred to being unable to decide which they favoured most. There was widespread positivity towards greater procedural flexibility on how goals were achieved. What was particularly interesting is that support for this scenario – as with the general pattern of views – could not easily be ascribed to any particular 'category' of actor. It was not the case that those from statutory bodies delivering environmental regulations had a different pattern of view to those involved in planning, or that those involved in development-promoting roles had different views from those involved in regulatory or plan-making roles. Indeed, environmental regulators and civil servants too mentioned areas where freedom from specific EU procedural requirements could be beneficial, and not just in reducing bureaucracy. Spatial delineation was identified a potentially important role for planning in this scenario i.e. identifying particular areas where more tailored approaches could be taken.

Support for Scenario 3 may well have been buoyed by stating that it operated in the context of firm environmental targets (i.e. we were just talking about flexibility of means), though a few respondents did recognise that being more flexible about the means by which conservation objectives are achieved could implicitly affect the ends. This links to a specific point that came up frequently in the research. When asked whether EU environmental targets could themselves be problematic, the most commonly given response was to refer to the protective measures required under the Habitats Directive to conserve specific species: e.g. dormice, bats, otters and Great Crested Newts (see Text Box).

[10] Noting that achieving environmental 'net gain' raises a whole host of issues that cannot be considered in any detail here (see for example Cowell 2000).

Text Box 2: Great-Crested Newts and environmental values

The demands that the Habitats Directive has created for the protection of Great Created Newts, and the uncertainties and costs these have created for developments came up spontaneously and frequently when talking with planning professionals about EU environmental standards and the scope for changes, post-Brexit. Such concerns can be split into two sets.

Some are concerned at the procedural complexity, costs (and doubtful effectiveness) of measures that focus on protecting existing newt populations and translocating them into new habitats. This could be characterised as concerns about *means*, and it is an issue being addressed by new measures that focus on maintaining overall newt populations and the creation of more suitable habitats at a wider scale (Pickstone 2018). However, respondents also often wondered whether, on leaving the European Union, there might be useful scope in reducing the level of protection for species they perceived to be rare at EU level but relatively common in the UK. This is a point about *ends* – about what is valued in the environment and warrants conserving.

One might interpret these commonplace remarks as inferring that a significant proportion of planning professionals hold the view that (some) wildlife is sufficiently abundant across the country that there is no reason why its conservation should restrict (or even slow down) development, and that there is no problem in moving, post-Brexit, to seeking only to maintain minimal viable UK populations, existing mainly within special nature reserves, safely removed from new development areas. This may not be what many interviewees ultimately would wish, but the views obtained were sufficiently frequently expressed to show that there is a need for significant discussion across the wider planning community about the value of abundant, diverse wildlife amidst the places we inhabit and create.

By comparison, the focus groups generated less spontaneous engagement with the merits of Scenario 2, with its reference to the procedural rights and checks and balances that have been instituted or under-scored by EU membership. Concerns that emerged did so as part of concerns for Scenario 4: respondents asked who would hold decision-makers to account once we left the EU? It may be that some respondents are genuinely ambivalent about the value of procedural checks and public engagement opportunities; or at least uncertain as to how often they translate into substantively better outcomes – especially perhaps where they work in planning authorities, public bodies or developers who have stronger rights in planning processes already. This is of course a much wider issue, that links with emerging proposals to fill the ‘environmental governance gap’, and whether the process for making complaints and securing redress seeks to emulate the significant scope afforded by EU institutions and environmental legislation, or the more restrictive scope of domestic planning legislation (see for example, discussion of Aarhus Convention application in TCPA 2018).

For almost all respondents, Scenario 4 – ‘More scope to soften goals’– was viewed highly negatively. One respondent referred to it as ‘my worst nightmare’. For all the Brexit rhetoric of ‘taking back control’, respondents were almost uniformly concerned that this might translate into domestic politicians exercising any new found powers to weaken environmental protections in the pursuit of short-term gains. For some, this reflected perceptions that government (e.g. MHCLG) had long come to regard EU requirements like EIA as a barrier to development, especially housing.

Respondents added that any ‘gains’ to such procedural streamlining could be illusory, insofar as weakening standards and requirements could simply create more uncertainty and lead to more cases ending in the courts.

Many of the concerns about the planning-environment interface were UK-wide, but it is also clear that scenarios for the future could be perceived very differently outside England in the devolved government areas. Perhaps the starkest concerns came from Northern Ireland. Here respondents were concerned about the limited capacity or interest of the devolved government in environmental concerns, and the weakness of institutional arrangements compared to the rest of the UK (Northern Ireland has no independent environment or conservation agencies). The prospect of losing the safety net of EU environmental protections was thus seen as presenting grave risks of a major governance gap (see also Gravey 2018), especially given the collapsed state of devolved government.

In Scotland, respondents were confident that devolved governments would sustain their commitment to high environmental standards, allied to Scottish Government goals to continue benchmarking themselves against standards and goals applying in the EU. For instruments like SEA, Scottish respondents felt strongly that they had been advancing ‘good practice’ within this area: an illustration of how ‘the impacts of EU legislation on planning in the UK’ need disaggregation in the context of devolution, but also of scope for intra-UK policy learning regardless of Brexit.

Similar arguments can be heard from Wales, albeit that explicit EU alignment was less discussed by our respondents than strategic economic agendas that linked the future economic competitiveness of Wales to maintaining high environmental quality. Quite unrelated to Brexit, Welsh Governments had used extensions of the devolution settlement to significantly reform environmental and planning legislation, creating a distinctive set of approaches, many of which were beginning to link environment, sustainability and planning in new ways. Steps towards simplifying planning legislation are also on the agenda (Mynors 2018).

4.4 Propositions for change

Throughout the research, effort was taken to seek any ideas for specific potential post-Brexit changes and then, having obtained ideas, to test their merits in subsequent stages of the research. Through this approach, a series of ‘propositions for change’ were brought to the focus groups, and used to stimulate a more focused discussion. For each focus group approximately ten propositions were selected from a larger menu (see full list in Appendix 1). As discussed at the end of Section 3, while some propositions may be enabled (or at least made simpler to achieve) by Brexit, in many cases the propositions refer to measures that could be advanced under EU membership, but for which Brexit provides an opportunity rather than a necessity.

To summarise the findings, the propositions are dealt with in groupings that reflect their broad intent, and the patterns of responses is discussed for each. None of the propositions received wholly unequivocal endorsement; indeed, one of the benefits of using interviews and focus groups is that it encouraged counter-arguments to be presented.

Propositions to elevate the status of substantive goals

- Higher material status for air quality standards
- Higher material status for water quality standards
- Shifting legal culture to create a stronger focus on purpose, goals and benefits rather than procedural compliance
- A 'directive' for meeting housing need

Respondents were generally very positive about propositions that improved the outcome- and goal-orientation of planning, rather than a narrow focus on process. It was widely perceived that air quality had historically been too low profile, and too lacking in political support and skilled practitioners to champion it. Air quality concerns were already becoming more important. Some respondents pointed to Client Earth's legal challenge as vital in raising its profile; others to adjustments to England's National Planning Policy Framework (MHCLG 2018). Respondents also express a need to go further, including better integration with plan-making, enabling a more strategic role that could embrace otherwise cumulative effects (e.g. distributing land uses in ways less likely to generate traffic and therefore pollution).

Where there were challenges, it lay in giving the planning system a responsibility to address issues without the power to do so, and in potential duplication of agency effort. Some respondents from a legal background also recognised that reinforcing a goal- or outcome-orientation to decision-making in planning could entail deeper challenges to the types of interpretive approaches that the UK courts take to applying the law (Reid 2012[11]).

The 'directive[12] on housing need' proposition was design to respond to arguments that EU legislation unduly gave more weight to environmental concerns than social concerns, such as housing need. It tests the idea that housing delivery (or other social goals) could be driven forward by legal frameworks that echo the goal-focused and regulatory style of EU environmental directives. Recent reviews of the English planning system have also considered outcome-based housing duties (TCPA 2018). Connections may also be drawn to the broad concept of 'social justice floors', as a concept for giving a presence to serious social concerns in planning in a manner comparable to environmental limits. This proposition had more detractors than other propositions, through the reasoning that placing a legal duty on local planning authorities to deliver something that they cannot wholly control, and which requires balancing against other goals, could be a legal nightmare. Again, this points to wider challenges entailed in making planning more accountable for its performance against substantive goals.

Propositions to simplify or reduce the ambit of environmental regulation

- Reducing the risk (to developers) and complexity of EIA
- Simplifying the application of the Habitats and Birds Directives to smaller projects
- More flexible, landscape-scale approach to nature conservation
- Reforming SEA

[11] Similar challenges will arise more widely as the UK courts have to deal, post-Brexit, with the concept of retained EU Law (see for example http://www.legislation.gov.uk/ukpga/2018/16/notes/division/22/index.htm
[12] Noting of course that the very conception of a Directive applies very specifically to EU-level governance; the proposition was for something in the style of a directive.

Propositions concerned with reducing the costs and uncertainties of environmental regulation had their supporters, and not only among respondents that worked in development promotion. Discussion of the specific propositions merged into wider debate about the merits of *inter alia* EIA, revisiting issues around clarity and proportionality (discussed in section 4.2.3 above). Critics suggested that any simplification of process had its risks (leading to a 'race to the bottom' or developers gaming any size thresholds), and that there needed to be wider recognition of how EIA was used as an effective project design tool, alongside consenting processes. Using EIA in ways that enabled closer focus on the most significant environmental effects had many advocates, but with a recognition that any such adjustments could be inappropriately exploited. As some pointed out, developers can appreciate guidelines and rules where they provide certainty and avoid a vacuum.

The same debate dynamics could be observed for the proposition on taking a landscape-scale approach to nature conservation and other environmental issues. On the positive side, respondents felt it could help deliver locally-adapted and outcome-based approaches, but there could be risks to sensitive and valued sites if new flexibilities were not organised as an *addition to* protective measures. Greater flexibility requires careful controls, including provision for accountability, effective implementation and transparency.

Propositions to integrate procedures

- Combining public consultation (for development plans and SA/SEA)
- Closer integration of assessment and decision-making processes for plans and for projects
- Moving towards integrated environmental plans

Respondents were broadly warm towards the idea and direction of travel indicated in the propositions, seeing closer integration as good project management from all sides, but they could also be equivocal about the specific gains or problems that might be achieved in practice. There was strong support for the idea of integrating the public engagement requirements of SEA with those of plan preparation, though this was often just part of wider concerns that SEA should be more closely integrated with plan-making, such as strategic option appraisal. For some, the low public engagement in SEA generally was a much bigger problem, but if SEA was more closely integrated with plan-making then its relevance to the public may become more apparent (see also Illsley et al 2014).

When it came to integrating consenting/permitting procedures, respondents saw positive steps already being made (the DCO process, for example), and supported the scope for further alignment where that might make decision-making processes more efficient. But again, it was also recognised that procedural integration has its limits and costs. It is likely to be of greater benefit to the more complex developments, as it is larger projects that need to negotiate EU legislation more often in planning. Plus each of the consenting requirements has its own distinctive requirements and lines of accountability, which cannot easily be combined. The metaphor put forward of a 'one stop shopping centre' being preferable to a 'one stop shop' captures some of difficulties expressed here, along with the view that improvements would be most consistently welcome at the level of information flow and coordination.

Similar observations were made about the prospects of greater integration of environmentally-

driven plans and those of the planning system, including anxieties that environmental concerns could be deprioritised, watered down or lose detail. Forms of integrated assessment were felt to be already driving forward aspects of this agenda.

4.5 Conclusions

A number of broad points can be taken from the data.

Firstly, the pattern of responses from the data very quickly reached ‘saturation point’ i.e. there was a high level of overlap between the areas of concern between interviewees and focus groups, such that over time progressively fewer new lines of thinking emerged. As an analysis of thinking in the profession, the research can therefore be seen as reasonably robust.

The key points to emerge are as follows:

- The role of EU membership in driving substantive environmental improvements is recognised, and there is broad support for retaining focus on substantive outcomes, post-Brexit.
- There is support for more procedural flexibility in how outcomes are achieved.
- The devolved context makes important differences to how scenarios for the future are perceived, but the areas and themes of concern overlap substantially.
- While the propositions for change had their supporters, few attracted unqualified support, and this illustrates a wider challenge for institutional design, post-Brexit. Just as EU membership and environmental legislation consists of a set of compromises between sovereignty and consistency (at different scales), between formality and discretion, any future post-Brexit arrangements will also need to consider how compromises on such issues are struck, with the prospect that different balances may be favoured by particular interests.

In case the point needs repeating, resourcing levels for the planning and environment sector frequently recurred as an issue.

However, the interviews and focus groups deliberately pushed participants to think about the scope for change – the opportunities and risks – and obtained useful data accordingly. But because the research team were pushing respondents to think about options for change, the responses do not necessarily indicate how actors will respond to actual future prospective changes and nor do they easily measure the intensity of concern. Indeed, the research has not encountered a major, pent-up desire to embark on radical changes to the governance of planning and environmental issues, post-Brexit. Moreover, the focus group discussions often revealed desires to maintain existing regulatory arrangements, at least in the short-term. Not unreasonably, the major, short-term uncertainties and risks that Brexit creates have rather pushed aside the appetite for long-term more strategic reflection.

5.0 Conclusions

The subject matter addressed in this paper – the scope for and desirability of making changes to the relationship between planning and EU-derived environmental policy – is doubtless one that will be revisited again in future. This study, designed as it was to provide an overview, can only touch on issues that merit examination in further detail. Nevertheless, the sections below outline a series of conclusions, and also offer some heuristic tools to support structured investigation of the issues involved.

5.1 Is there pressure for change?

Although there is a lengthy and sometimes messy frontier between EU environmental directives and domestic planning legislation, our research did not identify major, explicit pressure for change. Indeed, respondents did not identify issues emanating from EU environmental legislation that needed addressing urgently. Indeed, there was some desire for at least short-term regulatory continuity while the uncertainties of the Brexit process play themselves out.

This deduction comes with warnings. It assumes that future pressures for streamlining (or tightening) of regulations emanates from clear, explicit position statements, which may simply not be the case, especially in turbulent times. Politicians and organisations promoting visions of Brexit based on 'free markets' and escaping alignment with EU regulations have largely refrained from arguing for specific reforms, but they are applying pressure just the same. Moreover, for all that (at the time of writing) it is unclear how the Brexit process may end, the UK and devolved governments are already introducing measures to institute environmental principles and create new environmental watchdogs that will affect the form of future environmental governance arrangements. For all these reasons, it remains advisable for the planning profession to form clear views and be prepared to engage with the Brexit process.

5.2 How should we think about the case for change?

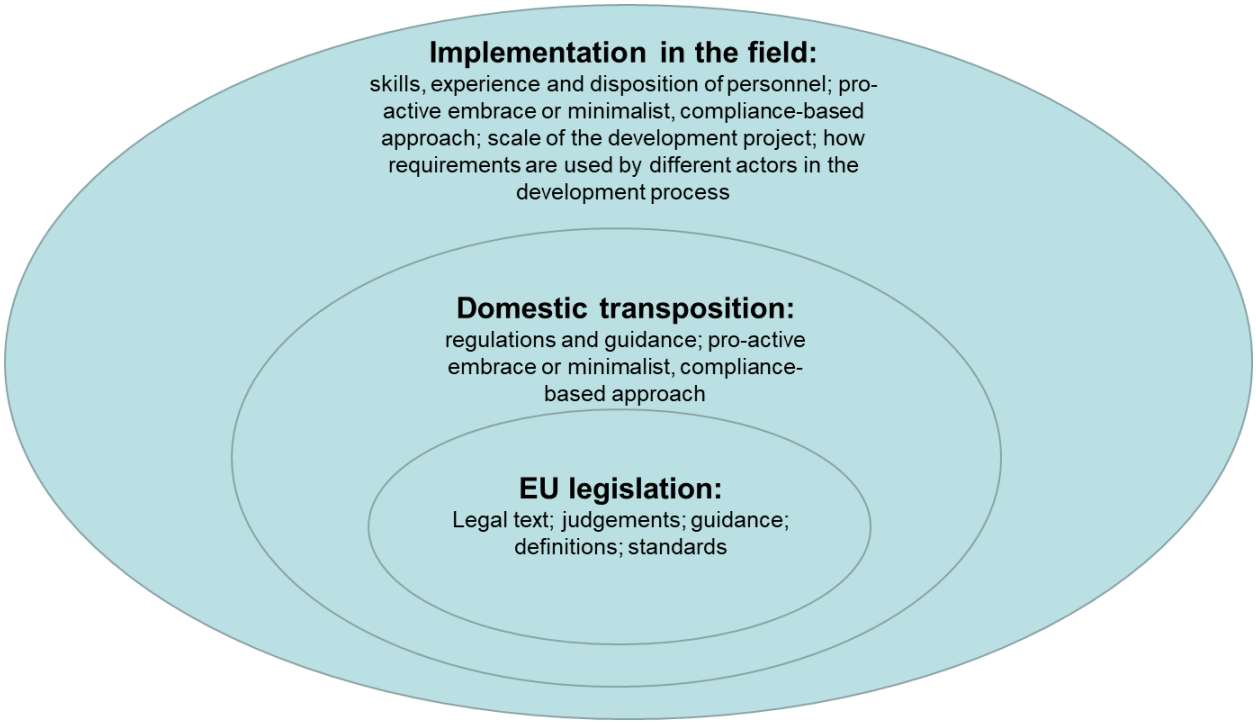
Our research shows that the scope for improvements or any simplification in how planning supports EU-derived environmental goals cannot be readily derived from a technical assessment of duplication. This is partly because most environmental directives do not interface with planning in ways which would generate duplication of means; many are concerned with ends (targets, standards), usually determined outwith planning. The nature of EU legislation as directives, which confer on member states the scope to choose their means of compliance, should also militate against duplication. Interesting arguments have been made that certain procedures like EIA, rooted in EU Directives, could be attained directly through planning legislation – a point to which we return.

A related point is that judgements of how EU environmental directives and planning work together cannot be purely technical, since positions tend to relate to a series of value judgements: about costs and benefits, their extent and what constitutes a cost or benefit, and on whom they should fall. In some cases they are hard to detach from wider value judgements about the extent to which the location, form and design of development should be moulded to observe environmental constraints. Our research has shown that two sets of questions can apply useful to judgements

about the potential for change.

One set is about the fuzziness of causation, since our research has shown that – when you examine what planning professionals may find problematic about applying EU Directives – the cause is rarely easily attributable to the particular terms of EU legislation, guidance or legal judgements i.e. to those things that are specifically likely to have less force post-Brexit. As summarised in Heuristic 1, many of the causal effects may be essentially about the domestic context; Brexit is an opportunity for a re-think, but not in itself a necessity for changes to be made.

Heuristic 1: What causes problems with environmental planning?



The issues contained within the three concentric ovals can of course be related, and we make no judgement about the factors in themselves, but they provide a set of questions that can reasonably be asked in a situation of prospective change.

The second set of questions is about the benefits and risks arising from changes that might simplify or reduce the requirements made of EU-derived legislation (for example the ambit of EIA). The idea that agreed goals should be achieved by means that are as simple, legitimate and transparent as possible consistent with effectiveness obviously commands wide assent. However, our research also provides a reminder of the potential risks involved. Heuristic 2 distils what are likely to be the key axes of debate, post-Brexit, representing them as key questions. They are relevant to a number of policy areas.

Heuristic 2: Should we simplify environmental legislation? Axes of debate

	Question
Precaution	How much information do we need, how good does the evidence need to be, in order to make a particular planning decision?
Dealing with the small	As a particular instance of the above, how do we judge that a risk or possible impact is likely to be sufficiently small such that a closer investigation or regulatory constraint is inappropriate?
Who decides	In respect of the above questions, who has the discretion to make such decisions and how much discretion should they have?
Checks and balances	Can the discretion of the decision-maker above be challenged, if so on what terms and basis?
Consistency	Is the creation of a consistent framework beneficial, for (i) ensuring minimum levels of performance from local planning authorities and developers, or (ii) dealing with cross-boundary issues?

Issues of the type above permeated the interviews and focus groups, from questioning whether more impacts could be scoped out of EIA to whether developments that make negligible effects on European wildlife sites should be subject to the stringent tests of public interest. One should expect them to emerge in future, post-Brexit. Moreover, Brexit has itself brought many aspects of these questions centre stage. For example: the precautionary principle is among the EU environmental principles being considered for inclusion in English legislation. Brexit has triggered debate and action around the creation of new environmental bodies and their capacity to keep governments to their obligations. There is also interest in how the Aarhus convention gets written into domestic legislation and how its obligations are interpreted (TCPA 2018).

5.3 What is the strategic vision?

Our research explored numerous areas where the relationship between planning and EU-derived environmental legislation might be improved, through integration or simplification. However, many of them could be advanced without Brexit, and our research affirmed the view that what makes EU environmental legislation distinctive and effective is less the details of the legislation than a number of overarching qualities and the wider environmental governance architecture in which they sit (Burns et al 2016). Arguably, then, thinking about the scope for improving the relationship between planning and environmental legislation post-Brexit should look beyond a wish-list of atomistic tweaks, but rather engage explicitly in debate about the overall strategic direction for the way environmental issues are addressed in planning.

Our research sought feedback on a number of scenarios, but found positive interest in scenarios that entailed re-creating the best features of EU environmental governance, in the sense of:

- Pursuing a set of formal and ambitious environmental goals, targets and standards, linked to clear time frames, against which implementation could be monitored and, if required, enforced.
- With this, retaining and reinforcing the status of environmental goals in the making of development plans and development decisions.

The implication of this scenario is that, as the UK leaves the EU, careful consideration should be given to maintaining key, positive qualities of EU environmental legislation (its tendency to be formalistic, regulatory and governed through arms-length mechanisms), rather than see

environmental legislation become more like UK planning legislation, which tends to be more discretionary, with shorter, political lines of accountability.

Such a scenario may already be beginning to emerge, in elements of the government's 25 Year Environment Plan for England (HM Government 2018), in new environmental watchdog bodies, and in the use of purposive introductory statements in recent new planning legislation in Wales and links to statutory purposes. Nevertheless, there is much to be discussed right now, at the time of writing, as to how far these new measures should be applied to embrace environmental aspects of planning (Ricketts 2018; TCPA 2018). Moreover, there are challenges entailed by such a scenario, in asserting the importance of environmental goals in a planning system attuned to balance and treating each case on its merits, and in the implications for traditional UK styles of legal judgement (Reid 2012).

Some of the governance qualities of EU environmental directives may apply with equal relevance to the social sphere. So, insofar as there may sometimes be concerns that issues of housing need are not subjected to equal standing to particular environmental conservation concerns, the solution need not necessarily be to weaken ostensibly competing environmental requirements but to give genuine social needs greater status. The Raynsford Review of planning in England (TCPA 2018) engaged with this issue, but there is a wider agenda of 'social floors' that set the safe space for human flourishing (Raworth 2012).

The research conducted for this study showed many professionals in the built environment to be happier with decision-making processes that remain robust on outcomes but rely less on policing procedural compliance. As a corollary, our research found broad support from across the planning profession for greater flexibility in the means by which environmental goals are to be attained. Such a scenario also has relevance to Brexit. Where 'leave' scenarios require some form ongoing commonality with EU regulations, the requirement is very often couched in terms of equivalent levels of protection, much less on procedural consistency with EU legislation.

5.4 Beware of over-extrapolation

This may seem a strange point to follow on from a call to think strategically, but in contemplating the merits of potential changes care needs to be taken in how one extrapolates from specific problems or concerns to the advocacy of change to the wider policy and legislative system. Context-specificity matters, in a number of respects.

i) Devolution to UK nations

Most obviously, concerns expressed about the relationship between planning and EU environmental directives may vary between parts of the UK and – even if certain generic concerns tend to recur – the devolved governments have already been, and show every sign of continuing, to mould this relationship in ways which fit domestic political priorities or beliefs about institutional design. In Northern Ireland, the substantive fate of environmental governance per se, is an object of considerable concern given the collapsed state of devolved government.

ii) Project scale

As most seasoned planning commentators will know, concerns readily circulated about the performance of planning may not necessarily apply to all or even a majority of planning

applications or categories of development. For this research project, respondents expressed the view that it is major projects that are most often affected by the greatest number of EU Directives, and whose proponents may be most affected by any future institutional change. However, with nationally significant infrastructure projects, there is often already government interest in actions that smooth the interface with particular EU environmental requirements (HM Government 2012).

iii) Leaping from problem to policy and principle

Environment-development tensions often have different qualities in different situations, and we should pause before leaping from specific situations to arguments for modifying legislation (say the strength of protection). So for example, there may be valued wildlife species or habitats that have ecological requirements which are unusually likely to intersect with the geographical requirements for necessary development (think Great-crested Newts or heathland in southern England). In such situations it may be appropriate to think of problem-specific ways of operationalising solutions that can best bridge conservation and development requirements. However, there is a need for much greater caution in leaping from particular problematic situations to arguments for changing conservation policy across the board.

5.5 Issues for further investigation

Inevitably, the particular focus and approach of our study means that there are issues which have not been given adequate attention, but could be the basis of further study.

Environmental Impact Assessment

This study was designed to cover and assess ten main EU Directives, which meant inevitably that those directives that attracted greatest interest often generated questions that could not be fully addressed. EIA is the main directive to which this applies. For many respondents it symbolises 'EU environmental legislation', and it was subjected to some very major claims. For example that it does nothing not already done by the planning system, or that other EU member states have found ways to make EIA 'easier' than the UK. We do not necessarily support these observations, but there is a case for using Brexit as an opportunity review the UK's experience with EIA vis a vis other EU member states; to do so with a wider evaluative remit than government's 'red tape review', and acknowledge a wider range of affected parties other than just 'developers as customers' of planning (RCEP 2002); to situate EIA within wider flows of environmental knowledge within the planning systems and how it comes to inform policy, decisions and assessments of performance; and to consider how the value of EIA may be enhanced if situated within an environmental governance framework, including planning, that gives greater attention to goals and targets.

Planning, environment and agriculture

The scope for this research has been set by a suite of environmental directives (IEEP 2018), but also (implicitly) by a particular, present-day interpretation of planning. While this has made the research tractable, it has had some limiting effects, notably in relation to agricultural policy. One of the prime areas of potential future policy creativity, post-Brexit, is in agriculture and the replacement of the Common Agricultural Policy: concerning both the kind of public support that agriculture receives and the wider regulatory framework in which it operates. Although the role of town and country planning in agricultural operations has been modest, moves to a UK policy

environment in which public money is spent on delivering public goods – rather than supporting production – should inevitably raise questions about whether (i) such money might be better spent with regard to a coherent spatial vision for the landscape, and (ii) whether further value may be gained for public funding if the balance of permitted development rights around agriculture and forestry are reviewed. Holistic environment-landscape agendas emanating from Westminster and other governments (e.g. biodiversity net gain [HM Government 2018]) also suggest a less sectoral policy context, in which the environment-agriculture-planning interface becomes important.

Towards more integrated environmental planning

One of the ideas that pervades the subject of this research is the idea that there should be 'more integration' between planning and environment, often attached to the idea of some form of more integrated planning that would be both simpler (reducing the need for multiple plans of a spatial/environmental nature) while remaining effective. Knowing the problems with this, and the hesitancy of previous much larger studies (RCEP 2002), investigating the idea in any detail has been beyond this piece of work. However, at the time of writing it seems plausible that domestic agendas for England emerging from the 25 Year Environment Plan may push towards greater integration in the way that planning and environmental protection are conducted. And while Brexit is not required for this to happen, it may well be that this is an arena in which the merits of two styles of governance – the one more formal, regulatory, with implementation better supported and policed (reflecting the effects of EU membership); the other more discretionary (drawing on domestic traditions) – will come into close conjunction. Herein lies a grounded setting for examining more closely the merits of the broader scenarios outlined in this research.

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Appendix 1 Propositions and scenarios

A key goal of the research was to identify specific areas of potential change in the way that planning and environmental policy fit together. Rather than simply producing these as outputs, potential changes were created and actively used and tested in the research itself, especially in the interviews and focus groups where they were used to stimulate thinking and reflection. They were derived from the desk research, but also emerged iteratively from the earlier interviews.

As well as identifying specific propositions for change, we also identified a number of broader scenarios about the planning/environment interface. This is to reflect the fact that the bigger impacts (or areas of potential change) arising from Brexit lie less in the details of potential tweaks than in the broader governance styles and formats associated with EU legislation compared to planning in the UK.

As noted above, many of the ideas do not necessarily need Brexit for them to become possible, as EU legislation *per se* is not the barrier to action. Thus many of the ideas also pick up themes and issues that can be found in the RCEP (2002) report on environmental planning, especially on coordination and integration.

In certain areas, the scenarios connect to issues that are already emerging in the Government's own, domestic responses to governance architecture questions, post-Brexit. For example, proposals in DEFRA's consultation on the new environmental body and principles, could have the potential to bring the performance of planning more closely into alignment with environmental goals (Ricketts 2018).

Broad scenarios for future environment/planning interface

1. More European? A goal-led system
In this scenario, the UK nations retain and continue to strengthen firm goals and targets for environmental issues, sets timetables by which they are to be met and improved, and tighten the role of planning in helping to achieve them. It might mean, for example, raising the materiality of air quality and water quality goals in plan-making. It may also mean making greater use of Sustainability Appraisal/SEA to check performance of plans against goals.

2. More European? Clear, independent and transparent procedures
In this scenario, the UK recreates the kind of formal, arms-length mechanisms for policing compliance with environmental policy that existed when we were EU members. It might mean that the new environment body proposed to replace the role of the European Commission also deals with planning-related implementation issues, overseeing discretion of local and national decision-makers. It also means ensuring that the opportunities for public engagement and access to the scope to make complaints are at least as good as at present.

3. More domestic? Flexibility of means
In this scenario, the UK nations retain and continue to strengthen goals and targets for environmental issues, but there is more flexibility for domestic actors in how these goals are achieved i.e. we judge the rightness of plans or project decisions more in terms of (environmental) outcomes than procedures. It might mean, for example, using catchment-scale solutions to meet water quality goals rather than mandating particular treatment facilities. It might mean being more flexible in how we ensure that decision-makers have sufficient environmental information.

4. More domestic? Flexibility of goals
In this scenario, the UK nations take a different approach to environmental goals and standards. It may look to soften them to help accommodate development. It may retain environmental goals and standards but allow increased scope for derogations or delaying compliance, if decision-makers believe the case for a particular project warrants it, perhaps for economic or social reasons.

Propositions

A sample of these propositions was used in each focus group, with the selection tailored to the expertise of the audience.

De-risking EIA for developers
Steps should be taken to ensure that, for developers, where projects evolve or new issues arise, there is not a need to begin the whole of the EIA process again.

Reforming SEA

Combining consultation
Steps should be taken to combine the public consultation requirements for land use plans with the public consultation requirements for SEA/Sustainability Appraisal.

Higher material status for air quality standards
Steps should be taken to further tighten the links between plan-making and air quality standards, with land allocations and policies doing more to demonstrably reduce the risk of air quality standards being breached.

Higher material status for water quality standards
Steps should be taken to further tighten the links between plan-making and water quality standards, with land allocations and policies doing more to demonstrably reduce the risk of water quality standards being breached.

A flexible, landscape-scale approach to nature conservation
For those species whose conservation needs allow it, and where mitigation strategies are well accepted, we could move to approaches that rely less on application-by-application approaches to reducing impacts on specimens (such as translocation) and make greater use of approaches that link development to landscape scale habitat enhancement and wider population outcome goals.

Reducing the use and complexity of EIA
After Brexit, steps could be taken to reduce the bureaucratic impact of environmental impact assessment, perhaps by raising the thresholds for the categories of development to which it applies, and making more use of the scope that already exists in planning legislation for planning authorities to request that applicants provide more information on the issues that concerns them before making a decision.

A 'directive-style' measure for housing need
After Brexit, we should take steps to identify clear targets for housing need, especially for affordable/social housing specifically, and pursue these with the kinds of rigorous attention to implementation and enforcement that currently backs-up EU environmental directives.

Integrated assessment and permitting (plans)
After Brexit, steps should be taken to integrate further different forms of assessment relevant to plan-making, such as linking SEA/Sustainability Appraisal to Appropriate Assessment (under the Habitats Directive).

Integrated assessment and permitting (projects)
After Brexit, steps should be taken to integrate further different forms of development consent, building on steps underway to integrate EIA with the Appropriate Assessment (Habitats Directive) and Health Impact Assessment, to also consider pollution control permits, and perhaps planning permission and licenses to handle protected species.

Nature conservation and small projects
After Brexit, we should take steps to reduce the tests and mitigation requirements that apply to development applications that are small and also likely to be negligible in their effects on protected habitats and species.

Towards integrated environmental plans
We should take steps to align the production of land use plans, air quality management plans and river basin management plans much more closely together, with a view to possible integration.

Devolution
After Brexit, it is important that environmental and planning legislation is as consistent as possible across the UK, with steps taken to contain the level of divergence between the constituent nations of the UK.

For more information about RTPI's Brexit research

www.rtpi.org.uk/euwithdrawal

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